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THE VALIDITY OF CONTRACTS BETWEEN THE PULLMAN COMPANY AND ITS EMPLOYEES EXEMPTING RAILROADS FROM LIABILITY TO THE EMPLOYEES FOR NEGLIGENT INJURIES. — The usual contract between a Pullman employee and the Pullman Company contains a provision exempting from liability for injury to the employees all railroads over whose lines the company operates. It is well settled that, if such a contract is valid, it is available to the railroads as a defense.[1] Contracts exempting a carrier from liability to passengers for negligent injuries are universally held to be void as against public policy.[2] In this country the same is true, generally at common law [3] and often by statute,[4] of contracts exempting a master from such liability to a servant. The courts have held, however, that in the absence of special circumstances [5] a Pullman employee is not a servant of the railroad.[6] And they have usually held that he is not a passenger.[7] With the failure to put the contract into either of these classes the courts have concluded that it is valid, and this result is followed in a recent case. *Lindsay* v. *Chicago, B. & Q. R. Co.*, 226 Fed. 23 (C. C. A., 7th Circ.).[8] It is submitted that this conclusion does not necessarily follow. The terms "servant" and "passenger" are only important in that they denote parties to relations of such a nature that the law considers against public policy their contracts releasing the railroads from the consequences of negligence. The question whether the relation of the Pullman employee to the railroad is also of such a nature merits an independent consideration.

It is a strong policy of the law to enforce contracts freely entered into between the parties.[9] But in cases where one of the parties is under a sort of economic coercion this policy loses a large part of its force. Hence the courts have refused to enforce against passengers and servants their contracts of exemption, considering that they are compelled, one by the

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[1] Russell *v.* Pittsburgh, C. C. & St. L. R. Co., 157 Ind. 305, 61 N. E. 678; McDermon *v.* Southern Pac. Co., 122 Fed. 669; Chicago, R. I. & P. R. Co. *v.* Hamler, 215 Ill. 525, 74 N. E. 705.

[2] New York Central R. Co. *v.* Lockwood, 17 Wall. (U. S.) 357; Doyle *v.* Fitchburg R. Co., 166 Mass. 492, 44 N. E. 611. See HALE, BAILMENTS AND CARRIERS, 529; 26 HARV. L. REV. 742.

[3] Johnson *v.* Fargo, 184 N. Y. 379, 77 N. E. 388. See 5 LABATT, MASTER AND SERVANT, 2 ed., 5972; 26 HARV. L. REV. 742.

[4] See, for example, The Federal Employers' Liability Act, 4 U. S. COMP. STATS. (1913), § 8661.

[5] Oliver *v.* Northern Pac. R. Co., 196 Fed. 432.

[6] Robinson *v.* Baltimore & Ohio R. Co., 40 App. D. C. 169, affirmed 237 U. S. 84; McDermon *v.* Southern Pac. Co., *supra*, 122 Fed. 669.

[7] Russell *v.* Pittsburgh, C. C. & St. L. R. Co., *supra*, 157 Ind. 305, 61 N. E. 678; Chicago, R. I. & P. R. Co. *v.* Hamler, *supra*, 215 Ill. 525, 74 N. E. 705; McDermon *v.* Southern Pac. Co., *supra*, 122 Fed. 669. *Contra*, Jones *v.* St. Louis Southwestern R. Co., 125 Mo. 666, 28 S. W. 883; Coleman *v.* Pennsylvania R. Co., 242 Pa. St. 304, 89 Atl. 87.

[8] See RECENT CASES, p. 458, for a statement of the facts.

[9] In Baltimore & Ohio R. Co. *v.* Voigt, 176 U. S. 498, Shiras, J., in declaring void a contract similar to those under consideration, says, at p. 505, "At the same time it must not be forgotten that the right of private contract is no small part of the liberty of the citizen, and that the usual and most important function of courts of justice is rather to maintain and enforce contracts, than to enable parties thereto to escape from their obligations on the pretext of public policy, unless it clearly appears that they contravene public right or the public welfare."

necessity of securing transportation,[10] the other by the necessity of securing work,[11] to enter into such agreements. The latter necessity — that of getting employment — is no less present in the contracts now under discussion. The Pullman Company makes the signing of the contract a prerequisite of employment; and the employee is limited in his choice of employers for such work to a very few, if not to one. So, too, if the result of such contracts is contrary to other public interests, the policy of preserving the integrity of private agreements loses much of its cogency. It is true that the ordinary duty of due care may be contracted away in some cases.[12] The law, however, is interested in protecting the life and health of its citizens; and where the relation of the parties is such that the safety of one is largely dependent on the care of another, it is the interest of the law to preserve the incentives to careful conduct. It is considered, as regards the relation of master and servant, that a contract of exemption tends to diminish the necessary care of the master.[13] The same considerations apply to the contract of the Pullman employee. It has been suggested that the railroad has sufficient inducement to be careful in its liability to passengers and servants and the danger of harm to its property. But the same might be said of a master whose business is such that his negligence might lead to injury to his property and to others not his servants; yet the law does not allow him to contract away liability to his servants, for the greater his responsibility, the stronger his motive to be careful. Another possible consideration to be urged against such contracts is the modern tendency, reflected in statutes, to make a business, and hence indirectly the public, bear the financial burden of injuries to those engaged in the business. Since the Pullman employee could not recover against the Pullman Company, the contract would throw the burden of the injury on him.

Whether in weighing these considerations the balance is for or against the sort of contract here involved is a question of degree, on which there may be a difference of opinion. The passenger contracts are distin-

[10] In New York Central R. Co. *v.* Lockwood, 17 Wall. (U. S.) 357, Bradley, J., in showing why a carrier should not be allowed to contract away his liability to passengers, says, at p. 379, "The carrier and his customer do not stand on a footing of equality. The latter is only one individual of a million. He cannot afford to higgle or stand out and seek redress in the courts. . . . He prefers rather to . . . sign any paper the carrier presents."

[11] In Johnson *v.* Fargo, *supra*, 184 N. Y. 379, 77 N. E. 388, Gray, J., in declaring void a contract exempting a master from liability to his servant, says, at p. 385, "The employer and the employed, in theory, deal upon equal terms; but, practically, that is not always the case. The artisan, or workman, may be driven by need, or he may be ignorant or of improvident character. It is, therefore, for the interest of the community that there should be no encouragement for any relaxation on the employer's part in his duty of reasonable care for the safety of his employees."

[12] World's Columbian Exposition *v.* Republic of France, 38 C. C. A. 483, 96 Fed. 687; Mehegan *v.* Boyne City, G. & A. R. Co., 141 N. W. 905 (Mich.). *Contra*, Johnson's Administratrix *v.* Richmond, etc. R. Co., 86 Va. 975, 11 S. E. 829. See also Galveston, H. & S. A. Ry. Co. *v.* Pigott, 54 Tex. Civ. App. 367, 380, 116 S. W. 841, 848.

[13] In Johnson *v.* Fargo, *supra*, 184 N. Y. 379, Gray, J., says, at p. 385, "The state is interested in the conservation of the lives and of the youthful vigor of its citizens, and if the employers could contract away their responsibility at common law, it would tend to encourage on their part laxity of conduct in, if not indifference to, the maintenance of proper and reasonable safeguards to human life and limb."

guished because they contravene the carrier's public service duty.[14] But it is submitted that the courts are inconsistent in declaring the contracts between master and servant void, while at the same time upholding the Pullman employees' contracts. In both cases there is the same economic coercion, the same constant dependence for safety on the party seeking immunity, and the same financial burden on the workman. And it should make no difference that in the latter case the contract is with one person and the exemption in favor of another.

"JITNEY BUS" REGULATION. — The rapid rise of the automobile hack, or "jitney bus," has called forth a correspondingly widespread body of legislation, which is the more interesting because of the uniformity of its purpose and its treatment by the courts. Much of this is in the form of municipal ordinances licensing and otherwise regulating the conduct of the business. Though a city has no inherent power either to license or to tax an occupation,[1] that the necessary authority, at least with regard to this particular occupation, is within the delegated powers of most municipalities is sufficiently attested by the large number of such ordinances,[2] none of which seems as yet to have been disapproved by a court of record. The ultimate power of regulation, however, remains in the state, and an operator, though licensed under a valid municipal ordinance, remains subject to statutory control.[3] The normal mode of effecting such control is, by the very nature of the business, through the public service commissions of the various states. Yet in some states, oddly enough, it seems that the commissions have no jurisdiction over these conveyances,[4] while in others it is certain that no action has as yet been taken by the commissions.[5] On the other hand, a number of these bodies have assumed jurisdiction through a liberal interpretation

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[14] In New York Central R. Co. *v.* Lockwood, 17 Wall. (U. S.) 357, Bradley, J., says, at p. 378, "In regard to passengers the highest degree of carefulness and diligence is expressly exacted. . . . It is obvious, therefore, that if a carrier stipulated not to be bound by the exercise of care and diligence . . . he seeks to put off the essential duties of his employment."

[1] City of Chicago *v.* O'Brien, 268 Ill. 228, 109 N. E. 10; City of St. Louis *v.* Laughlin, 49 Mo. 559. See 3 MCQUILLIN, MUNICIPAL CORPORATIONS, § 987 (pp. 2194–5).

[2] An exhaustive digest of all ordinances on the subject in the principal cities, up to June 15, 1915, is found in THE UTILITIES MAGAZINE, vol. i, no. 1, p. 28 (July, 1915); reprinted in 46 ELECTRICAL RAILWAY JOURNAL, 314 (Aug. 21, 1915).

[3] Public Service Commission *v.* Booth, 155 N. Y. Supp. 568.

[4] Arkansas, California,* Florida, Indiana, Iowa, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Missouri (*semble*), Montana, Nebraska, New Hampshire, New Jersey, North Dakota, Oregon, Tennessee, Washington. (For the information in this and the following note, indebtedness to THE UTILITIES MAGAZINE, vol. i, no. 2, p. 23 (Nov., 1915), is acknowledged.)

* Opinion of Commission counsel. This has now been affirmed by a decision of the California Railroad Commission itself. Western Association of Short Line Railroads *v.* Hackett, P. U. R. 1915 F, 997 (Sept. 30, 1915). The jurisdiction in each case is a matter of local statute, of course.

[5] Connecticut, Idaho, Louisiana, Nevada, North Carolina, Ohio, Oklahoma, Pennsylvania, Vermont, Virginia, West Virginia.